

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

B. RILEY FBR, INC., f/k/a B. RILEY &
CO., LLC,

Case No. 18-CV-2575 (NEB/BRT)

Plaintiff,

ORDER ON MOTION TO DISMISS

v.

CHIPPEWA CAPITAL PARTNERS, LLC,
and MESABI METALLICS COMPANY,
LLC f/k/a ESSAR STEEL MINNESOTA,

Defendants.

B. Riley FBR, Inc. (“B. Riley”) brought this lawsuit against the Defendants on September 4, 2018. [ECF No. 1.] Because the merits of the case will be addressed in arbitration, the Complaint simply asks for injunctive relief to prevent the Defendants from spending or otherwise disposing of money allegedly owed to B. Riley. (*Id.*) B. Riley moved for a temporary restraining order and preliminary injunction [ECF No. 10] and the Court denied its motion [ECF No. 46]. Defendants moved to dismiss the case [ECF No. 24] and the Court held a hearing on March 11, 2019 [ECF No. 56]. The parties agree that the case should be dismissed, since the Complaint only alleged a single count for

injunctive relief, which the Court denied. But B. Riley requests that the Court dismiss the case without prejudice so that, if future facts come to light, it can refile the lawsuit.

The case is dismissed with prejudice. The Court decided the merits of the action, concluding as a matter of law that B. Riley was not entitled to the relief it sought. Since the adjudication was on the merits, it warrants a dismissal with prejudice. *See Ahmed v. United States*, 147 F.3d 791, 797 (8th Cir. 1998) (finding that “dismissal for failure to state a claim upon which relief can be granted is an adjudication on the merits”); *Phoenix Entm’t Partners, LLC v. Star Music, Inc.*, No. 16-CV-4078 (PJS/FLN), 2017 WL 5714021, at *5 (D. Minn. Nov. 28, 2017) (“Rule 12(b)(6) dismissals are commonly with prejudice.”).

In an alternative to its request for dismissal without prejudice, B. Riley requests that the Court issue a ruling that dismissal of this lawsuit will not have a preclusive effect on a future potential (and hypothetical) lawsuit. Such a ruling would constitute an advisory opinion, and so the Court will not grant the request. Whether any future lawsuit based on additional facts would be precluded by this Court’s ruling is a question for another time.

Based on the foregoing and on all the files, records, and proceedings herein, IT IS
HEREBY ORDERED THAT:

1. Defendants' Motion to Dismiss [ECF No. 24] is GRANTED; and
2. This action is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 21, 2019

BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge